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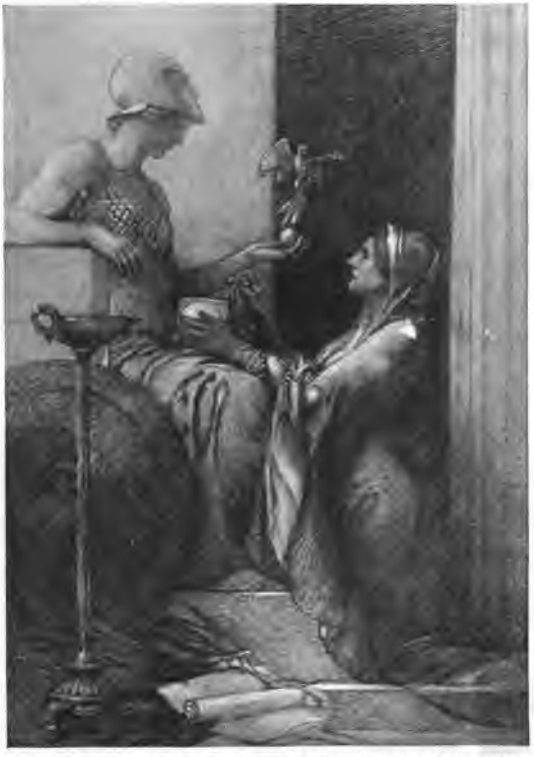

OBSERVATIONS

ON

THE SITUATION

OF

HIS ROYAL HIGHNESS

THE PRINCE OF WALES.

BY JOHN NICHOLLS, ESQ.

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OBSERVATIONS, &c.

THE payment of the Prince of Wales's debts engages the attention of the public. The idea that they are to be diſcharged by the nation is offenſive. If there exiſts any where a fund, the property of the Prince, and which he is entitled to call for, juſtice requires that his claim ſhould be brought forward, and if on examination the Prince's claim is well-founded, the money ought to be paid him, that he may relieve himſelf with his own property, and not with the bounty of others.—I am of opinion that ſuch a fund does exiſt; and I believe that thoſe who will conſider the matter coolly and diſpaſſionately, will concur with me in this opinion.

The Prince on his birth became proprietor in Fee-ſimple of the Duchy of Cornwall, by virtue of a ſettlement made of that duchy by act of Parliament in the 11th of Ed. III.—The eſtate created by that act was a Fee-ſimple Qualified, in many reſpects of a very peculiar nature; differing indeed ſo much from the rules of the common law, that nothing ſhort of the power of Parliament could have created it.—For, 1ſt, it is an eſtate which may deſcend from the anceſtor to the heir before the death of the anceſtor, contrary to that general rule, *Nemo eſt hæres viventis.* 2dly, It is a Fee-ſimple which may *determine* for want of heirs, and *revive* whenever a perſon comes *in eſſe*, entitled to claim as heir within the deſcription of the ſettlement; in this likewiſe it differs from eſtates at the common law.—There are other circumſtances of peculiarity, which it is not neceſſary to remark.

The Prince of Wales on his birth became owner of this Fee-ſimple Qualified; but it did not deſcend to him from his father: for the Fee-ſimple Qualified created by the act of the 11th of Ed. III. was in abeyance, previous to the birth of the Prince of Wales; *id eſt*,

eſt, it exiſted only in contemplation of law. —His preſent Majeſty never was owner of this Fee-ſimple, for, not being the firſt-born ſon of a King of England, he was not heir to that eſtate within the deſcription of the ſettlement.

During the life of George II. his preſent Majeſty held the Duchy of Cornwall by virtue of a grant from his grandfather, and on the death of George II. he was remitted to the old eſtate in Fee-ſimple which exiſted in Edward III. previous to the ſettlement made in the 11th of that monarch's reign. This old Fee-ſimple, which was in his preſent Majeſty previous to the birth of the Prince of Wales, *vaniſhed* on the birth of the Prince of Wales; the Prince taking by deſcent, as heir of the Fee-ſimple qualified, created by the 11th of Ed. III.

The Prince being owner of the Duchy of Cornwall from the moment of his birth, the preſumption of law is, that he was entitled to the revenues from the ſame period; they have been received by the King during the Prince's minority; but, except the King can ſhew a right to retain them, they have been received for the uſe of the Prince. A caſe

has been cited by Mr. Anſtruther, as an anſwer to the Prince's claim of theſe revenues during his minority; viz. the claim of Charles I. while Prince of Wales; on which claim, it is ſaid, the judges were of opinion that Prince Charles was not entitled.

I do not know whether this opinion of the judges is in print; I have not been able to meet with it. But the title of Prince Charles was widely different from that of the preſent Prince of Wales. For, 1ſt, Prince Charles did not take the Duchy of Cornwall as heir of the Fee-ſimple Qualified, created by the 11th of Ed. III. Prince Charles not being the firſt-born ſon of a King of England, ſo as to enable him to take as heir, within the terms of that ſettlement. He took as a purchaſer, under a grant from his father King James; taking as a purchaſer, and by virtue of a grant from his father, Prince Charles had no pretence to demand the revenues antecedent to the date of his grant. That Prince Charles did not take the Duchy of Cornwall as heir under the ſettlement of the 11th of Ed. III. is proved by the doctrine laid down in *The Prince's Caſe*, in Lord Coke's 8th Report: for it is there laid down, that

that Henry VIII. did not ſucceed to the Duchy of Cornwall, as heir under this ſettlement, becauſe he was not the firſt-born ſon of a King of England; his brother Prince Arthur having been the firſt-born ſon. Now if this doctrine was well founded as to Henry VIII. it applied equally to the claim of Prince Charles, his brother Prince Henry having been the firſt-born ſon of King James.

I am aware that there is a dictum of Lord Hardwicke, in a caſe reported by Vezey, in which his lordſhip is ſtated to have entertained doubts of the ſoundneſs of the doctrine laid down by Lord Coke, in his report of *The Prince's Caſe*. Lord Hardwicke's opinion (admitting it to have been correctly ſtated by Mr. Vezey) was a mere *dictum*, thrown out *obiter*, and extrajudicially; and is acknowledged to have been founded on a looſe expreſſion of Lord Bacon, viz. that on the death of Prince Henry, the Duchy of Cornwall *devolved* on Prince Charles. Now, in the firſt place, it is to be obſerved, that this expreſſion is uſed by Lord Bacon, not as lawyer, but as an hiſtorian; and it is hazarding a great deal to ſay, that Lord Bacon

con meant by this expreſſion, that Prince Charles took by deſcent, and not by purchaſe. *The Prince's Caſe* was a moſt ſolemn deciſion, in the Court of Chancery, by Lord Chancellor Elleſmere, aſſiſted by Sir John Popham, Sir Edward Coke, Fleming, Chief Baron, and Williams, Judge of the King's-Bench; the object of the diſcuſſion was to aſcertain the rights of Prince Henry as Duke of Cornwall. And all the various incidents of that Qualified Fee-ſimple which was created by the 11th of Ed. III. were examined in the courſe of the diſcuſſion.

Lord Elleſmere, Sir John Popham, and Sir Edward Coke, are names of the firſt eſtimation among the ſages of the law; and we have the advantage of having the caſe reported by Sir Edward Coke, at that time Chief Juſtice of the Common Pleas, and who himſelf aſſiſted at the judgment. From the conſideration of theſe circumſtances, I cannot ſay that this dictum of Lord Hardwicke at all weighs with me, when oppoſed to the ſolemn deciſion reported by Lord Coke. *The Prince's Caſe* was decided in the 3d of James I. and when Prince Charles's claim was examined by the judges, I cannot help

help thinking that they muſt have guided themſelves by that ſolemn deciſion ſo lately pronounced, and which they had at that time in print reported by Lord Coke. If they did guide themſelves by the doctrine laid down in *The Prince's Caſe*, there was an end of Prince Charles's claim; for as he did not take as heir, but as a purchaſer under his father's grant, there was no colour for his claiming the revenues antecedent to the date of his grant.

But admitting for the moment, that the judges who decided on Prince Charles's claim did not adopt the doctrine laid down in *The Prince's Caſe*, yet, notwithſtanding this, there was another ground on which they were obliged to decide againſt Prince Charles's claim. If Prince Charles took as heir, King James, as Guardian in Chivalry, was entitled to receive to his own uſe the revenues of the Duchy during the minority of the Prince. So that, *Quâcunque Viâ*, whether Prince Charles took as a purchaſer under a grant from his father, or as heir of the Fee-ſimple created by the ſettlement in the 11th of Ed. III. he was not entitled to the revenues during his minority.

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This rejected claim therefore of Prince Charles muſt be laid out of the queſtion; and can in no degree influence our opinions, reſpecting the right of the preſent Prince of Wales; except his Royal Highneſs can be ſhewn to ſtand in one of the two ſituations in which Prince Charles muſt have ſtood; viz. either as a purchaſer claiming by grant from his father, or as an heir, liable during his minority to the rights of a Guardian in Chivalry. And, if the language of his Majeſty's Attorney General has been correctly ſtated in the News-papers, this is the ground on which his Majeſty's right to retain the revenues during the Prince's minority ſeems to be reſted: viz. that the ſtatute of the 12th of Car. II. c. 24, does not extend to that eſtate in Fee-ſimple, which was created by the 11th of Ed. III. and that conſequently the King, as Guardian in Chivalry, was entitled to the revenues of the Duchy during the minority of the Prince.

If the ſtatute of the 12th of Car. II. did not extend to this eſtate, as well as to all other eſtates of inheritance within this realm, then I admit that the King had a right to the revenues during the Prince's minority; but I maintain,

maintain, that the ſtatute of the 12th of Car. II. did extend to this eſtate, and I challenge the Attorney-General to advance any ſolid Reaſons in ſupport of a contrary opinion.

Not having been preſent when the Attorney-General is ſuppoſed to have advanced this doctrine, I do not exactly know on what grounds he reſted his opinion. The news-papers ſuppoſe him to have taken a diſtinction between a military tenure and a peerage tenure; to have ſtated that the Prince's eſtate in the Duchy of Cornwall was a peerage tenure, and to have aſſerted that the ſtatute did not aboliſh Guardianſhip in Chivalry in the caſe of a peerage tenure. I am not certain that there is ſuch a diſtinction of *military tenure* and *peerage tenure*; but if there is, I maintain that the ſtatute has aboliſhed *the fruits and conſequents* of tenure in every inſtance; and that no caſe can *now* exiſt in which the King, as Guardian in Chivalry, is entitled to take to his own uſe the revenues of any man's eſtate during his minority.

The expreſſions in the ſtatute reſpecting peerage honours will all be found to have

been introduced for the protection and ſafe-guard of thoſe honours, and not for the purpoſe of keeping peerage honours ſubject to the burthenſome fruits of tenure. The whole purview of that ſtatute is the abolition of the burthenſome fruits of tenure, which the ſtatute recites to have been more burthenſome to the ſubject than beneficial to the King. Can the Attorney-General ſhew that there is any other eſtate in England over which the right of Guardian in Chivalry remains? It will be a ſingular circumſtance if the ſtatute has aboliſhed Guardianſhip in Chivalry, as to every other eſtate in England, and ſuffered it to remain in force againſt this eſtate of the Prince of Wales, in the Duchy of Cornwall. At the time that this ſtatute of the 12th of Car. II. was enacted, the fee-ſimple created by the 11th of Edw. III. in the Duchy of Cornwall, was either veſted in the King himſelf, or it was in abeyance. If it was veſted in the King himſelf, is it probable that this eſtate alone was that to which His Majeſty would not extend his bounty? If it was in abeyance, let it be obſerved, that it is expreſſly declared by the ſtatute, that the King ſhall

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in future create no tenure but in common ſocage; is it probable that the legiſlature, anxiouſly providing that the King ſhould in future create no tenure but in common ſocage, could intend, that this eſtate in the Duchy of Cornwall, whenever it came again *in eſſe*, ſhould be of the nature of a military tenure, and liable to guardianſhip in chivalry? If this eſtate remained liable to guardianſhip in chivalry, it remained liable alſo to the *Valor Maretagii*; for the right of marrying the ward was always conſequent on guardianſhip in chivalry. Was the Prince of Wales to be the only man in the kingdom for whoſe marriage the King was to receive a price? Surely it will be a difficult matter for the Attorney-General to maintain, that the ſtatute of the 12th of Car. II. has aboliſhed guardianſhip in chivalry, in reſpect of every other eſtate in the kingdom, and retained it in reſpect of this eſtate in the Duchy of Cornwall, created by the 11th of Edw. III.

But if the Attorney-General reſts the King's claim on this ground, he will certainly admit that it is a doubtful point, whether the ſtatute of the 12th of Car. II. does

or does not extend to the Prince's eſtate, and the *onus probandi* lies on the Attorney-General; for the Prince claims as tenant in fee-ſimple, the King claims a *particular* eſtate, a *chattel intereſt*, as Guardian in Chivalry. Now, wherever any one claims that a *particular* eſtate ſhall be carved for his benefit out of a fee-ſimple, it is incumbent on him to ſhew his right to this *particular* eſtate, otherwiſe every thing is preſumed to belong to the tenant of the fee-ſimple. At all events the King's claim is ſo doubtful, that it will be indecent in the Attorney-General, and the King's Miniſters, to perſevere in retaining theſe revenues, except the King's claim is ſanctioned by the opinion of the Judges; this is a ſtep which cannot be avoided; the opinion of the judges muſt be taken on the queſtion.

If the Prince is entitled to the revenues, during his minority, he will not be reduced to the painful neceſſity of applying to Parliament for their aſſiſtance to enable him to diſcharge his debts. He will not be exhibited to the world as a prodigal who has contracted debts which he has no means to pay. The nation, before it diſcharges the Prince's

Prince's debts, has a right to know whether the Prince is not entitled to a fund which will of itſelf be adequate to that purpoſe. The Prince's creditors likewiſe have an equitable intereſt in this fund, and have a right to know whether there exiſts a fund for their immediate payment, before they accept terms analogous to a compoſition.

I am aware that His Majeſty's Miniſters will ſay, that the King has expended theſe revenues; and therefore, if it ſhould ultimately be found that the King is indebted to the Prince to the amount of theſe revenues, yet, as the King has not the money, it muſt be paid by the nation; and that it is of little conſequence whether the Parliament diſcharges the Prince's debt or the King's debt. But I am not of this opinion.

In the firſt place, the juſtice due to the Prince requires, that the public ſhould know whether the Prince is diſcharging his debts with money received from the bounty of the nation, or whether he is diſcharging them with his own money. If he diſcharges his debts with his own money, he may have been guilty of folly in contracting debts; but he has not been guilty of a deviation from

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moral rectitude, by contracting debts he was unable to pay. It muſt make a material difference to the Prince, whether he is to be held out to the world as a *ſolvent* or as an *inſolvent* man.

If money is granted by Parliament, the public ought to know whether that money is granted for the relief of the Prince, or for the relief of the King. If the money is granted for the relief of the King, leſs ſenſation will be cauſed in the public mind than if it is granted for the uſe of the Prince.

The matter will ſtand thus: the King has received the revenues of the Duchy during the Prince's minority; he conceived them to be his own; he has expended them; no blame can attach on the King, for he can do no wrong. The blame muſt fall on the various miniſters who, from the birth of the Prince, have ſuffered the King to continue under the miſtake, and have not apprized him that the revenues of the Duchy were the property of his ſon, and ought to be laid by for his uſe. The miniſters will ſay, that they were miſled by the deciſion of the judges on Prince Charles's claim. At all events, the blame will fall on various ſucceſſions of mini-

miniſters; and the nation, accuſtomed to hear that miniſters have ſuffered the public money to be incautiouſly ſpent, will grumble, pay the money, and forget the tranſaction.

But the aſcertaining that the money is wanted for the diſcharge of a debt due from the King, may procure benefit to the people in another way. If it is a debt due from the King, when Parliament is called on to aſſiſt the King in diſcharging it, Parliament may reaſonably expect that the King will concur in ſelling ſome of the crown-lands for the payment of this debt; or the King may conſent to appropriate ſome part of his Civil Liſt for this purpoſe. But while the money is demanded for the diſcharge of a debt due from the Prince, this contribution on the part of the King cannot be aſked for by Parliament without being firſt offered by the King.

But it ſeems to be the determination of the King's miniſters, not only that no part of this debt ſhall be paid out of the Civil Liſt, or by the ſale of crown-lands, but they even ſeem reſolved that no part of it ſhall be paid by the ſale of the Prince's poſſeſſions as Duke of Cornwall. The Attorney-General

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is reported to have ſaid, that the Prince had only a lifehold-intereſt in the Duchy, and that the intereſts of the Duke of York and Duke of Clarence would be violated if the poſſeſſions of the Duchy were ſold. Mr. Pitt did not go quite ſo far as to ſay that the Prince had only a lifehold-intereſt, but gave it as his opinion, that the Prince was only tenant in tail.

My anſwer to theſe poſitions is, that they are all ill-founded. The Prince is not tenant for life; the Prince is not tenant in tail; the Prince is tenant in fee-ſimple. The Duke of York and Duke of Clarence have no intereſts; no, not even a poſſibility of intereſt in that eſtate of which the Prince of Wales is now ſeiſed.

Firſt, then, in anſwer to the Attorney-General's aſſertion that the Prince of Wales has only a lifehold-intereſt: I deſire to know what right the late Princeſs Dowager (his preſent Majeſty's mother) had to dower out of the poſſeſſions of the Duchy of Cornwall if Frederic, Prince of Wales, was only tenant for life? I have heard that ſhe demanded her dower, and that 3000l. a year was paid her out of the poſſeſſions of the Duchy in

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ſatisfaction of her claim of dower. If I have been miſinformed his Majeſty's Attorney-General can ſet me right. But if I am miſtaken as to this fact, I cannot be miſtaken as to another, viz. that Joan, the widow of Edward the Black Prince, had dower aſſigned her out of the poſſeſſions of the Duchy; for the deciſion on this claim is in the books. Now, I put it to the Attorney-General, as a lawyer, whether the wife could be entitled to dower if the huſband was only tenant for life? —So much in anſwer to the Attorney-General's poſition, that the Prince of Wales is only tenant for life.

To Mr. Pitt's aſſertion, that the Prince is only tenant in tail, I anſwer, that the contrary has been decided. It is laid down in *The Prince's Caſe*, 8th Report, that the Prince is not tenant in tail, but tenant in fee-ſimple; and this unanſwerable reaſon is there given for this opinion, viz. that the body is not limited out of which the heirs are to proceed; in other words, any heir of Edward the Black Prince (if the firſt-born ſon of a King of England) was entitled to claim this eſtate from Edward the Black Prince by deſcent. The Duke of York has no *intereſt*,

If the above obſervations are well-founded, the following concluſions are the neceſſary reſult.

1ſt. That the Prince from the moment of his birth was tenant in fee-ſimple of the Duchy of Cornwall.

2dly. That he was entitled to the revenues of that Duchy from the ſame period.

3dly. That they have been received by the King during the Prince's minority for the uſe of the Prince.

4thly. That this money, with all the increaſe which ought to have been made by placing out the ſame at intereſt, remains a debt from the King to the Prince.

5thly. That the Prince, his creditors, and the nation, have a right to demand that this fund ſhall be brought forward for the payment of the Prince's debts.

6thly. That in 1787, when a promiſe the moſt imprudent and the moſt humiliating was extorted from the Prince, he was proprietor of a fund adequate to the diſcharge of all his debts.

Laſtly, that at this very moment, while his Majeſty's miniſters are carrying through Parliament a meaſure which ſubjects the Prince

Prince to the reproach of having violated his promiſe, and which muſt neceſſarily diſgrace and degrade him in the eyes of his country and poſterity, the Prince is entitled to demand, as a debt from his father, a ſum of money ſufficient to relieve him from all his incumbrances.

SINCE theſe Obſervations were printed, I have found that Lord Coke's doctrine reſpecting the import of the word *Primogenitus* has been over-ruled; and that the ſecond ſon of the King is *Primogenitus* within the meaning of the act when his eldeſt brother is dead. The Duke of York, therefore, has a *poſſibility* of inheriting the Fee-ſimple created by the 11th of Ed. III.

Since theſe obſervations have appeared, the queſtion has aſſumed another ſhape. In the debate on Monday laſt, the Crown lawyers ſeem to have admitted the following poſitions: 1ſt, That the Prince is tenant in Fee-ſimple. 2dly, That he was tenant in Fee-ſimple from the moment of his birth.

3dly, That he was entitled to the profits of the eſtate from the ſame period. But they contended, that the eſtate having been originally granted for the maintenance of the Prince, the King, having maintained him during his minority, was entitled to receive the revenues for the ſame period.

If this is the point of view in which the queſtion is to be conſidered, it lies in a narrow compaſs. How would it ſtand if the King was a private man, in affluent circumſtances, and having a numerous family? If, in this caſe, a collateral relation was to bequeath to his eldeſt ſon an independent fortune, I take it to be clear law, that no part of the income of the fortune ſo bequeathed would be applicable to the maintenance of the eldeſt ſon; the whole would be directed to be accumulated for the benefit of the eldeſt ſon; and the father would be told, that the circumſtance of his eldeſt ſon's having an independent fortune did not diſcharge him from the duty of maintaining his ſon. But if the father was in neceſſitous circumſtances, then I admit the Court of Chancery would permit ſome part of the income of the ſon's eſtate to

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be applied towards his maintenance. Why? Becauſe the father being neceſſitous, and therefore incapable of maintaining and educating his ſon, in a manner adequate to what the ſon's future rank required, it is for the intereſt of the ſon that his own money ſhould be employed in procuring him a ſuitable education. Is the queſtion between the King and the Prince to be tried by any analogy to this rule? If it is, it ſtands thus: viz. Was the King's income adequate to the maintenance of his family? Has not the King's civil liſt been ſeveral times augmented on account of his numerous family? Have not the debts on the civil liſt been ſeveral times diſcharged for the ſame reaſon? Has it not been the general tenor of the language of Parliament, that they meant to furniſh his Majeſty with an income adequate to the maintenance of himſelf and his family?

But I ſuppoſe I ſhall be told, that there is no analogy between the preſent caſe and that of a private man; that this eſtate was created by Ed. III. for the ſupport of the *ſtate* and *dignity* of the heir-apparent to the Crown; that a child in the cradle could have no *ſtate*

and *dignity*, and that therefore, during the time that the revenues of the Duchy were not wanted for the ſupport of the Prince's *ſtate* and *dignity*, the uſe of them reſulted to the King. If this is the ground on which the King's claim to the revenues during his ſon's minority is finally to be reſted, let us give it a moment's conſideration.

That great and heroic prince, Ed. III. ſaw that it was not for the intereſt of the nation that the heir-apparent to the crown ſhould ſtep at once from the nurſery to the throne. He ſaw that it was advantageous that there ſhould be a ſort of a middle ſtate, between the dependent condition of the ſon and the independent ſituation of the monarch. It was with that view that he created this eſtate; that he eſtabliſhed this fund for the ſupport of the *ſtate* of the heir-apparent. Is it clear that Ed. III. did not intend that the fund ſhould accumulate when there was no *ſtate* to be maintained? The contingent and caſual profits of an eſtate form part of the value of an eſtate. The Duke of Bedford has a large landed eſtate; the chance of a minority, and the conſequent accumulation during

during that period, forms part of the value of this eſtate. Might not Ed. III. view it in this light? Might he not ſay, I conſider the poſſible accumulation as a benefit; it promotes my views; it increaſes that fund which I deſtine for the ſupport of the *ſtate* of the heir-apparent: when the Prince is arrived at that age at which it is proper for him to aſſume his ſtate, he will not be diſtreſſed for money for his outfit; he will have wherewithal to allow even for the waſte generally attendant on the firſt years of a young prince's eſtabliſhment?

It is poſſible that great and heroic king might entertain theſe ſentiments; for we ſee from his own acts that he thought he had not done enough, and therefore added other lands by charter, and (as far as he was able) annexed them to the Duchy in the ſame manner as the lands which had been annexed by Parliament. Ed. III. when he created this eſtate, muſt, from a conſideration of the nature of the eſtate, have foreſeen the probability of frequent minorities. What were the ſentiments of Henry VI. and his Parliament on this ſubject, as far as they are to be

be collected from the two acts of the 33d and 38th of his reign?—What were the ſentiments of Henry VII. as far as they may be judged of from the expreſſions in the charter of livery to his ſon Prince Arthur?

I do not preſs theſe points, leſt intentions foreign from the truth ſhould be attributed to me. The ſentiment I urged in the *Obſervations* I ſtill retain, viz. that *his Majeſty's miniſters cannot retain this money, except they can obtain the opinion of the judges as a ſanction for their conduct.*

Conſider for a moment how the matter ſtands: the King's miniſter brings a meſſage to Parliament, ſuggeſting two facts; 1ſt, That the Prince has contracted debts: 2d, That the Prince has no means by which he can diſcharge thoſe debts; and praying the aſſiſtance of Parliament to enable the Prince to diſcharge them. Before the Parliament complies with this requeſt, undoubtedly it ought to enquire whether the facts aſſerted as the ground of the requeſt are true. The 1ſt, viz. That the Prince has contracted debts, is true: the 2d, viz. That he has no means to diſcharge thoſe debts, cannot be known

known to be true while ſuch a claim of the Prince's remains unexamined. The miniſter, from the manner in which he has framed the meſſage, has himſelf admitted, that the requeſt ought not to be complied with except Parliament believes that both the facts are truly aſſerted.